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19 May 1978

MEMORANDUM FOR: Acting Legislative Counsel

ATTENTION :

FROM :

Assistant General Counsel

SUBJECT : Comments on H.R. 9705, "Special Prosecutor Act of 1977"

STAT

1. You have asked for our opinion as to the acceptability of H.R. 9705 in its present form, inasmuch as the House Committee on the Judiciary did not make the amendment which the Agency had earlier sought.

2. In my opinion, our earlier position is still valid and we should continue to press for an amendment. As it presently stands, Section 595(a) of the bill allows the special prosecutor to make public such information concerning his activities as he deems appropriate, without regard for the fact that it may be classified or that intelligence sources or methods may be involved. This, of course, is not acceptable to the Agency.

3. I think the concern which the Director expressed in his earlier letter, copy attached, continues to be fully applicable. The proposed amendment which is suggested there continues to be appropriate.

STAT

Att

Honorable Peter W. Rodino, Chairman
Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I wish to express my concern with a provision contained in H. R. 9705, a bill which would authorize the appointment of a special prosecutor to investigate possible criminal activities of certain Executive Branch officials.

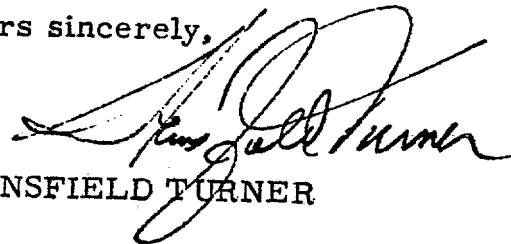
As proposed by the bill, section 594 of Title 28 of the United States Code would grant a special prosecutor all investigative and prosecutorial functions and powers of the Department of Justice or the Attorney General with respect to all matters in such special prosecutor's jurisdiction, except for those matters that specifically require the Attorney General's personal action under section 2516 of Title 18. Arguably, this could include access to national security information--specifically, classified information or information relating to intelligence sources and methods. Proposed section 595(a) would permit a special prosecutor to make public such information concerning his activities as he deems appropriate. I assume that this would not give a special prosecutor the discretion to determine if national security information should be included in his public statements or reports. Such a determination is the responsibility of the classifying agency or, in the case of information relating to intelligence sources and methods, the Director of Central Intelligence (50 U.S.C. 403).

I believe the bill should be amended to make clear that a special prosecutor does not have discretion to include national security information in a public report issued in accordance with proposed section 595(a). I have enclosed language which would accomplish this by specifying that any public report or statement must be consistent with limitations on the disclosure of national security information.

Approved For Release 2005/09/29 : CIA-RDP81M00980R000800020035-4
Thank you for your consideration.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Stansfield Turner", written over the typed name.

STANSFIELD TURNER

Enclosure

PROPOSED AMENDMENT TO H.R. 9705

Amend section 595(a) at page 9, line 13, by deleting the period after "appropriate" and adding: ", consistent with limitations on disclosure of information classified pursuant to a statute or Executive Order or protected from unauthorized public disclosure by statute.